

Amendment No. 1 to SB2091

Person, Curtis
Signature of Sponsor

AMEND Senate Bill No. 2091*

House Bill No. 2244

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by adding the following new sections immediately preceding the effective date section and by renumbering the effective date section accordingly:

SECTION 2. Tennessee Code Annotated, Title 36, Chapter 5, Part 1, is amended by adding the following as a new section thereto:

36-5-121.

(a) In any action for divorce, legal separation or separate maintenance, the court may award alimony to be paid by one spouse to or for the benefit of the other, or out of either spouse's property, according to the nature of the case and the circumstances of the parties. The court may fix some definite amount or amounts to be paid in monthly, semi-monthly or weekly installments, or otherwise, as the circumstances may warrant. Such award, if not paid, may be enforced by any appropriate process of the court having jurisdiction thereof, including levy of execution. Further, the order or decree shall remain in the court's jurisdiction and control, and, upon application of either party, the court may award an increase or decrease or other modification of the award based upon a showing of a substantial and material change of circumstances, provided the award is subject to modification by the court based on the type of alimony awarded, the terms of the court's decree or the terms of the parties' agreement.

(b) The court may, in its discretion, at any time pending the final hearing, upon motion and after notice and hearing, make any order that may be proper to compel a spouse to pay any sums necessary for the support and maintenance of the other spouse, to enable such spouse, to prosecute or defend the suit of the parties and to make other orders as it deems appropriate. Further, the court may award such sum as may be necessary to enable a spouse to pay the expenses of job training and education.

In making any order under this subsection, the court shall consider the financial needs of each spouse and the financial ability of each spouse to meet those needs and to prosecute or defend the suit. In providing funds to enable each spouse to prosecute or defend the suit, the court shall ensure that each spouse has adequate and reasonable access to resources to enable such spouse to employ counsel and such expert or experts, as may be reasonably necessary. In addition to whatever experts each party should desire, the court may appoint its own expert and order the payment of fees of the court-appointed expert by either or both parties from marital assets, as the court deems equitable, for such expert's services.

(c) Spouses have traditionally strengthened the family unit through private arrangements whereby one (1) spouse focuses on nurturing the personal side of the marriage, including the care and nurturing of the children, while the other spouse focuses primarily on building the economic strength of the family unit. This arrangement often results in economic detriment to the spouse who subordinated such spouse's own personal career for the benefit of the marriage. It is the public policy of this state to encourage and support marriage, and to encourage family arrangements that provide for the rearing of healthy and productive children who will become healthy and productive citizens of our state.

The general assembly finds that the contributions to the marriage as homemaker or parent are of equal dignity and importance as economic contributions to the marriage. Further, where one (1) spouse suffers economic detriment for the benefit of the marriage the general assembly finds that the economically disadvantaged spouse's standard of living after the divorce should be reasonably comparable to the standard of living enjoyed during the marriage or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

(d) The court may award rehabilitative alimony, alimony in futuro (periodic), transitional alimony, or alimony in solido (lump sum), or a combination thereof, as provided in this subsection.

It is the intent of the general assembly that a spouse, who is economically disadvantaged relative to the other spouse, be rehabilitated whenever possible by the granting of an order for payment of rehabilitative alimony. To be rehabilitated means to achieve, with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

Where there is relative economic disadvantage and rehabilitation is not feasible in consideration of all relevant factors, including those set out in subsection (i), the court may grant an order for payment of support and maintenance on a long-term basis or until death or remarriage of the recipient except as otherwise provided in subdivision (f)(2)(B).

An award of alimony in futuro may be made either in addition to an award of rehabilitative alimony, where a spouse may be only partially rehabilitated, or instead of an award of rehabilitative alimony, where rehabilitation is not feasible.

Transitional alimony is awarded when the court finds that rehabilitation is not necessary, but the economically disadvantaged spouse needs assistance to adjust to the economic consequences of a divorce, legal separation or other proceeding where spousal support may be awarded, such as a petition for an order of protection.

Alimony in solido may be awarded in lieu of or in addition to any other alimony award, in order to provide support, including attorney fees where appropriate.

(e)

(1) Rehabilitative alimony is a separate class of spousal support as distinguished from alimony in solido, alimony in futuro, and transitional alimony.

To be rehabilitated means to achieve, with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

(2) An award of rehabilitative alimony shall remain in the court's control for the duration of such award, and may be increased, decreased, terminated, extended, or otherwise modified, upon a showing of a substantial and material change in circumstances. For rehabilitative alimony to be extended beyond the term initially established by the court, or to be increased in amount, the recipient of the rehabilitative alimony shall have the burden of proving that all reasonable efforts at rehabilitation have been made and have been unsuccessful.

(3) Rehabilitative alimony shall terminate upon the death of the recipient. Rehabilitative alimony shall also terminate upon the death of the payor unless otherwise specifically stated.

(f)

(1) Alimony in futuro, also known as periodic alimony, is a payment of support and maintenance on a long term basis or until death or remarriage of the recipient. Such alimony may be awarded when the court finds that there is relative economic disadvantage and that rehabilitation is not feasible meaning that the disadvantaged spouse is unable to achieve, with reasonable effort, an earning capacity that will permit the spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

(2)

(A) An award of alimony in futuro shall remain in the court's control for the duration of such award, and may be increased, decreased, terminated, extended, or otherwise modified, upon a showing of substantial and material change in circumstances.

(B) In all cases where a person is receiving alimony in futuro and the alimony recipient lives with a third person, a rebuttable presumption is thereby raised that:

(i) The third person is contributing to the support of the alimony recipient and the alimony recipient therefore does not need the amount of support previously awarded, and the court therefore should suspend all or part of the alimony obligation of the former spouse; or

(ii) The third person is receiving support from the alimony recipient and the alimony recipient therefore does not need the amount of alimony previously awarded and the court therefore should suspend all or part of the alimony obligation of the former spouse.

(3) An award for alimony in futuro shall terminate automatically and unconditionally upon the death or remarriage of the recipient. The recipient shall notify the obligor immediately upon the recipient's remarriage. Failure of the recipient to timely give notice of the remarriage will allow the obligor to recover all amounts paid as alimony in futuro to the recipient after the recipient's marriage. Alimony in futuro shall also terminate upon the death of the payor unless otherwise specifically stated.

(g)

(1) Transitional alimony means a sum of money payable by one (1) party to, or on behalf of, the other party for a determinate period of time. Transitional alimony is awarded when the court finds that rehabilitation is not necessary, but

the economically disadvantaged spouse needs assistance to adjust to the economic consequences of a divorce, legal separation or other proceeding where spousal support may be awarded, such as a petition for an order of protection.

(2) Transitional alimony shall be nonmodifiable unless:

(A) The parties otherwise agree in an agreement incorporated into the initial decree of divorce, or legal separation or other of protection;

(B) The court otherwise orders in the initial decree of divorce, legal separation or order of protection; or

(C) The alimony recipient lives with a third person, in which case a rebuttable presumption is thereby raised that:

(i) The third person is contributing to the support of the alimony recipient and the alimony recipient therefore does not need the amount of support previously awarded, and the court therefore should suspend all or part of the alimony obligation of the former spouse; or

(ii) The third person is receiving support from the alimony recipient and the alimony recipient therefore does not need the amount of alimony previously awarded and the court therefore should suspend all or part of the alimony obligation of the former spouse.

(3) Transitional alimony shall terminate upon the death of the recipient.

Transitional alimony shall also terminate upon the death of the payor, unless otherwise specifically stated in the decree.

The court may provide, at the time of entry of the order to pay transitional alimony, that the transitional alimony shall terminate upon the occurrence of other conditions such as, but not limited to, the remarriage of the party receiving transitional alimony.

(h)

(1) Alimony in solido, also known as lump sum alimony, is a form of long term support, the total amount of which is calculable on the date the decree is entered, but which is not designated as transitional alimony. Alimony in solido may be paid in installments provided the payments are ordered over a definite period of time and the sum of the alimony to be paid is ascertainable when awarded. The purpose of this form of alimony is to provide financial support to a spouse. In addition, alimony in solido may include attorney fees where appropriate.

(2) A final award of alimony in solido is not modifiable, except by agreement of the parties only.

(3) Alimony in solido is not terminable upon the death or remarriage of the recipient or the payor.

(i) In determining whether the granting of an order for payment of support and maintenance to a party is appropriate, and in determining the nature, amount, length of term, and manner of payment, the court shall consider all relevant factors, including:

(1) The relative earning capacity, obligations, needs, and financial resources of each party including income from pension, profit sharing or retirement plans and all other sources;

(2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earnings capacity to a reasonable level;

(3) The duration of the marriage;

(4) The age and mental condition of each party;

(5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;

(6) The extent to which it would be undesirable for a party to seek employment outside the home because such party will be custodian of a minor child of the marriage;

(7) The separate assets of each party, both real and personal, tangible and intangible;

(8) The provisions made with regard to the marital property as defined in § 36-4-121;

(9) The standard of living of the parties established during the marriage;

(10) The extend to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;

(11) The relative fault of the parties in cases where the court, in its discretion, deems it appropriate to do so; and

(12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

(j) The court may direct a party to pay the premiums for insurance insuring the health care costs of the other party, in whole or in part, for such duration as the court deems appropriate.

(k) To secure the obligation of one party to pay alimony to or for the benefit of the other party, the court may direct a party to designate the other party as the beneficiary of, and to pay the premiums required to maintain, any existing policies insuring the life of a party, or to purchase and pay the premiums required to maintain such new or additional life insurance designating the other party the beneficiary thereof, or a combination thereof, as the court deems appropriate.

(l) The order or decree of the court may provide that the payments for the support of such spouse shall be paid either to the clerk of the court or directly to the

spouse, or in Title IV-D cases to the central collections and disbursement unit pursuant to § 36-5-116.

(m) Parties shall be given the greatest latitude in making a provision for the payment of alimony upon terms and conditions, as deemed appropriate, as reflected by the terms of a document. The courts shall affirm, ratify and incorporate into a decree any such terms agreed upon by the parties and executed in a document as to terms of support and maintenance of a party.

(n) Any order of alimony that has been reduced to judgment shall be entitled to be enforced as any other judgment of a court of this state and shall be entitled to full faith and credit in this state and in any other state.

SECTION 3. Tennessee Code Annotated, Section 36-5-101(a)(1)(A), is amended by deleting the first sentence in its entirety and substituting instead the following language:

Whether the marriage is dissolved absolutely, or a perpetual or temporary separation is decreed, the court may make an order and decree for the suitable support and maintenance of the children, by either spouse or out of such spouse's property, according to the nature of the case and the circumstances of the parties, the order or decree to remain in the court's control.

SECTION 4. Tennessee Code Annotated, Section 36-5-101(a)(2), is amended by deleting subdivision (B).

SECTION 5. Tennessee Code Annotated, Section 36-5-101(a), is amended by deleting subdivision (3) and redesignating remaining subdivisions accordingly.

SECTION 6. Tennessee Code Annotated, Section 36-5-101(a)(4)(A)(i), is amended by deleting the language "or spousal".

SECTION 7. Tennessee Code Annotated, Section 36-5-101(a)(4)(A)(ii), is amended by deleting the language "or spousal" wherever it appears.

SECTION 8. Tennessee Code Annotated, Section 36-5-101, is amended by deleting subsection (d) in its entirety and redesignating remaining subsections accordingly.

SECTION 9. Tennessee Code Annotated, Section 36-5-101, is amended by deleting subsection (i) and substituting instead the following:

(i) The court may, in its discretion, at any time pending the suit, upon motion and after notice and hearing, make any order that may be proper to compel a spouse to pay any sums necessary for to enable the other spouse to prosecute or defend the suit and to provide for the custody and support of the minor children of the parties during the pendency of the suit, and to make other orders as it deems appropriate. In making any order under this subsection, the court shall consider the financial needs of each spouse and the children, and the financial ability of each spouse to meet those needs and to prosecute or defend the suit.

SECTION 10. Tennessee Code Annotated, Section 36-5-102(a), is amended by deleting the language “§ 36-5-101” and substituting instead the language “§ 36-5-101 and § 36-5-121”.

SECTION 11. Tennessee Code Annotated, Section 36-5-105(a), is amended by deleting the language “§ 36-5-101” and substituting instead the language “§ 36-5-121”.